IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.345 OF 2004

IN

WRIT PETITION NO.4896 OF 2004

Mrs.Pramila Prakash Mande & Anr. ...Petitioners

Versus

Shri Rajendra Teli & Ors. ...Respondents

.....

Mr.K.Y.Mandlik for Petitioners.

Mr.Nitin Jamdar for Respondent No.1.

Mr.A.A.Kumbhakoni, Associate Advocate General with Mr.M.H.Solkar, A.G.P. for Respondent No.5.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 4, 2006.

P.C.

1. Heard Counsel for the parties. Perused the relevant documents and pleadings on record.

2. This Petition was originally filed as Writ Petition challenging the Order passed by the

Respondent No.5 dated 2nd January 2002 and by Respondent No.1 dated 21st October 2000. Incidentally, in prayer clause (b), the Petitioners prayed that the Respondent No.1 be directed to pay pay according to the pay-scale at Rs.350/- (Rupees Three Hundred Fifty Only) as on 1st April 1981 fixed as per order dated 6th November 1984. Referring to this prayer clause, the Division Bench of this Court on 26th July 2004 passed the following order :

> "The main prayer in this petition and the substantial prayer is implementation of the order of this court made in the year 2000. Not only the earlier order is not obeyed but further the services of the petitioner are affected by lowering the scale of the petitioner. This may prima facie amount to wilful violation of the orders of this court. Hence we direct this petition be converted as Contempt Petition and place before appropriate Bench."

3. Accordingly, this Petition is now placed before me to consider initiation of contempt action against the Respondents for non-compliance of order dated 31st August 2000 passed by the Division Bench of this Court in Writ Petition No.424 of 2000 which

was filed by the Petitioners.

4. For considering whether it is a case for initiating contempt action, I will have to straight away refer to the operative order passed by the Division Bench. The direction contained in the order dated 31st August 2000 reads thus:

> "(i) The Respondent No.1 is Directed to grant the pay scales recommended by the IVth Pay Commission from 1-1-1986 to the Petitioner.
>
> (ii) The Respondent No.1 is directed to grant benefit of the Municipal Council Resolution dated 21st March, 1997 passed by it in view of the State Government G.R. dated 18-4-1995.
>
> (iii) Both the benefits to be granted within a period of two months from today.
>
> Rule made absolute accordingly."

5. The question is: whether the Respondents have complied with the above directions. The first direction is to Respondent No.1 to grant pay-scale recommended by IVth Pay Commission from 1st January 1996 to the Petitioners and thereafter also to grant benefit of the Municipal Corporation Resolution dated 21st March 1997 in terms of State

Government Resolution dated 18th April 1995. This formality was to be complied within two months from 31st August 2000. From the pleadings and documents on record, it is seen that the Respondent No.1 processed the case of the Petitioners and proceeded to pass office order dated 21st October 2000. In this order, it is noted that the original pay fixation done in respect of the Petitioners was on mistaken belief. The correct pay fixation has been noted in this office order payable to the Petitioners with effect from 1st April 1981. Thereafter, applying the IVth Pay Commission as also the Resolution passed by the Municipal Council dated 21st March 1997, instructions were issued to take necessary steps for re-fixation of the pay-scales and compute the correct amount payable to the Petitioners.

6. The case of the Respondent No.1 is that this office order was necessitated on account of the audit objection for the financial year 1997-98 and 1999-2000. It has been noted in the audit objection with specific reference to the case of the Petitioners that wrong pay-scale was fixed qua

the Petitioners. In other words, the office order passed on 21st October 2000 is founded on the audit objection as referred to above. It is also seen that the Association of employees made representation to the superior authority, which representation was duly considered and rejected on 2nd January 2002 by the Respondent No.5. In this backdrop, the Petitioners filed Writ Petition before this Court challenging the order dated 21st October 2000 passed by the Respondent No.1, as also the order passed by Respondent No.5 dated 2nd January 2002.

7. Taking overall view of the matter, it is not possible to accept the grievance of the Petitioners that the Respondent No.1, in particular, has failed to comply with the direction contained in order dated 31st August 2000. This is so because thee is no dispute that in the office order issued on 21st October 2000, clear indication is given that the Petitioners should be paid on the basis of IVth Pay Commission and the Resolution of the Municipal Council in terms of the directions of this Court.

8. The order dated 21st October 2000 as is rightly contended by the Respondents, is in two parts. The first part of the order refers to the necessity of re-fixing the pay-scale of the Petitioners on account of unavoidable circumstances. The second part pertains to compliance of directions given by the Division Bench of this Court in order dated 31st August 2000. It would have been a different matter if the Division Bench in its order dated 31st August 2000 were to specifically refer to the issue as to what is the amount payable to the Petitioners towards their pay-scale with effect from 1st April 1981. The only issue before the Division Bench in Writ Petition No.424 of 2000 was regarding entitlement of the Petitioners to get benefit in terms of IVth Pay Commission and the Municipal Council Resolution.

9. Thus understood, no fault can be found with the Respondents for having proceeded to correct the record on the basis of audit objection noting that wrong pay-scale was provided to the

Petitioners. In this view of the matter, it is not possible to take the view that the Respondents have committed any breach of the order dated 31st August 2000 as such.

10. Indeed, Counsel for the Petitioners vehemently contends that the action of Respondent No.1 of re-fixing the pay-scale of the Petitioners was malafide, only with a view to denude the Petitioners of the benefit given to them under order dated 31st August 2002 passed in Writ Petition No.424 of 2000. It is contended that before re-fixing the pay-scale of the Petitioners, no notice was given to them. It was also contended that no such action was taken in respect of another employee Mr.Renke, who was similarly placed as that of the Petitioners.

11. Insofar as the first grievance of the Petitioners is concerned, if entertained, that would result in this Court examining the correctness of the order dated 21st October 2000 issued by Respondent No.1. That order will have to

be challenged in substantive proceedings and the said ground will be relevant in those proceedings. In contempt action, in particular, in a case of civil contempt, the area of enquiry is circumscribed with reference to the specific order passed by the Court and its non-compliance. As has been found earlier, it is not possible to accept the stand of the Petitioners that this Court in its order dated 31st August 2000 had directed the Respondents to pay on the basis of particular pay-scale which was already fixed and not to revise the same. The direction, however, was limited to extend benefit as available in terms of IVth Pay Commission from 1st January 1986, as also under the Resolution dated 21st March 1997 issued by the Municipal Council.

12. Insofar as the latter grievance is concerned, even that grievance does not survive any more, for the simple reason that it has now come on record that Mr.Renke was on deputation with the State Government. He has been repatriated to his parent Department and the Department has now taken appropriate corrective action with regard to his

pay-scale as well. The Respondents assure that the said action will be taken to its logical end in reasonable time. There is no reason to doubt the correctness of that stand taken by the Respondent No.1 on affidavit.

13. On the aforesaid findings, it is not possible to take the view that the Respondents, in particular, Respondent No.1 has committed any breach of any of the directions contained in order dated 31st August 2000, much less, wilful disobedience of the order of the Court. In such a situation, the only course open to the Court is to dismiss this Contempt Petition and discharge the notices issued to the Respondents.

14. In the peculiar facts of the present case, the Petitioners will have to be given liberty to take recourse to such other remedy as may be permissible by law. Those proceedings will have to be decided on its own merits.

Ordered accordingly.

A.M.KHANWILKAR, J.